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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1433**

In the Matter of the Maltreatment Determination
of Amanda Restorff and the Order to Pay a Fine
and Order of Conditional License
for the Family Child Care License of Amanda Restorff

**Filed April 30, 2018
Affirmed
Worke, Judge**

Minnesota Department of Human Services
File No. 10-1800-34116

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Services)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges a maltreatment determination, fine, and conditional license
issued by the commissioner of human services, arguing that the commissioner
misinterpreted and misapplied the law in concluding that relator engaged in neglect by

failing to properly supervise a child, and that the commissioner's decision is not supported by the evidence. We affirm.

FACTS

On August 1, 2016, around 8:47 a.m., a police officer was dispatched to an intersection on a report of a found child. A citizen reported that she heard semi-trucks honking their horns as they drove by her residence, causing her to look outside and see a child holding onto a street sign. Three-year-old G.B. told the officer that he was looking for his mom. Around 9:06 a.m., relator Amanda Restorff reported a child missing from her daycare. The officer returned G.B. to Restorff's daycare.

Restorff reported the incident to Wright County Health and Human Services (the county). Restorff stated that her helper had been outside with the children and that when she went outside she noticed that G.B. was missing. Restorff yelled and searched, but when she could not find G.B., she called 911 and G.B. was returned to her care. Respondent commissioner of human services (the commissioner) temporarily suspended Restorff's license to provide family childcare because "a child in [her] care was found unattended in the community," and the commissioner could not ensure the safety of the children in Restorff's daycare.

On August 30, 2016, the county sent Restorff a determination that maltreatment occurred. Restorff requested reconsideration, and the county upheld the maltreatment-by-neglect determination because G.B. was "found unsupervised, approximately 2.5 blocks from [Restorff's] home, along a busy road with semi-trucks honking as he stood by a

roadsign.” The county stated that this lack of supervision met the definition of neglect under Minnesota law.

In December 2016, the commissioner lifted the temporary suspension and notified Restorff that two actions would be taken against her license—she would have to pay a \$1,000 fine and her license would be on conditional status for two years. Restorff requested a hearing to contest the finding of maltreatment and the actions taken against her license.

At a hearing before an administrative-law judge (ALJ), a representative from the county testified that when Restorff’s helper was interviewed, she reported that Restorff was caring for 12 children, including four under five years old, on the date of the incident, and that the helper had been supervising the children outside while Restorff prepared breakfast. The county’s representative testified that Restorff violated a licensed-daycare supervision rule that requires caregivers to be within sight or hearing of the children in order to intervene. The county’s representative testified that Restorff’s license was suspended because of the severity of the situation—G.B. was three years old and he was found far from the home near a very busy road. The county’s representative also testified that the incident was foreseeable because a three-year-old child is limited cognitively in understanding boundaries. She believed that the incident was preventable and could possibly have been prevented if Restorff had been outside with the children while her helper prepared the children’s cereal.

Restorff testified that around 8:40 a.m. the children went to an outdoor area that is overlooked by a kitchen window and patio door. Restorff’s helper was outside and Restorff was in the kitchen where she could hear and see the children. Restorff brought breakfast

outside and called for the children. Restorff noticed that G.B. was missing and searched for him. Restorff testified that she explained what happened to G.B.'s parents and, for the first time, they told her that G.B. had previously wandered. She testified that she was surprised that they had not told her sooner because it is "a dangerous behavior."

Restorff testified that she has rules regarding where the children can play outside because in "[t]oday's world you can't trust anybody. . . . [P]eople walk through [the] neighborhood, bikers . . . anything." Restorff testified that she set "very clear boundaries," and although she never experienced a child wandering away, she stated that the "little ones" did not always follow the rules. For "[e]xtra caution," Restorff limits children under the age of five to a gated deck. Restorff testified that she did not follow this rule on the day of the incident because her helper was there, her windows were open, and she thought that she would be quick and everything would be fine. Restorff conceded that it is her responsibility to supervise the children when they are in her care and that she did not have the ability to intervene when G.B. was by the busy road.

The ALJ concluded that Restorff committed maltreatment by neglect and recommended that the commissioner affirm the finding of maltreatment as well as the imposition of the fine and conditions on Restorff's license. The commissioner determined that Restorff was responsible for maltreatment by neglect, and affirmed the fine and conditional license. Restorff sought review of the commissioner's decision by writ of certiorari.

DECISION

“Administrative-agency decisions enjoy a presumption of correctness and may be reversed only when they are arbitrary and capricious, exceed the agency’s jurisdiction or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record.” *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003). This court defers to the agency’s factual findings, but reviews de novo “the interpretation of statutes and their application to undisputed facts.” *Mattice v. Minn. Prop. Ins. Placement*, 655 N.W.2d 336, 340 (Minn. App. 2002), *review denied* (Minn. Mar. 18, 2003). “The relator has the burden of proof when challenging an agency decision” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 433 (Minn. App. 2003).

Maltreatment by neglect

The commissioner concluded that Restorff

committed maltreatment of a child by neglect by failing to provide necessary supervision in violation of the governing maltreatment statute and applicable day care rules.

[Restorff] failed to supervise G.B. when he walked away from her day care home, was found two and one-half blocks from her home, and was not within her sight . . . or hearing. G.B. was either not within [Restorff]’s sight or hearing . . . or [Restorff] was not capable of intervening while G.B.’s elopement from . . . [Restorff]’s yard was in progress. From the moment he left the home, G.B. was not within [Restorff]’s sight or hearing until the time he was returned to her care by a deputy sheriff.

Restorff argues that “[p]roof of maltreatment by neglect requires more than evidence that supervision safeguards failed on a single occasion.”

The legislature has undertaken to protect “children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse,” because sometimes circumstances interfere with parents’ ability to keep their children safe and “the health and safety of the children [is] of paramount concern.” Minn. Stat. § 626.556, subd. 1(a) (2016). The legislature has defined physical abuse, neglect, and sexual abuse. *Id.*, subd. 2 (g), (k), (n) (2016).

Restorff suggests that this court look to a dictionary definition of “neglect.” But that is unnecessary when the legislature has provided a definition. *See Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016) (“When a word is defined in a statute, we are guided by the definition provided by the Legislature”[;] “[w]hen there is no applicable statutory definition, we often consult dictionary definitions to discern a word’s plain meaning.”). She also suggests that maltreatment by neglect constitutes a form of abuse, which she claims is “underscored by well-settled principles of statutory construction.” But in determining whether Restorff committed maltreatment by neglect, as defined by statute, this court does not resort to canons of statutory construction unless a statute is ambiguous. *See Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014). When a statute is susceptible to only one reasonable interpretation, this court applies the statute’s “plain meaning.” *Id.* at 716-17.

Neglect is defined as, other than by accidental means, “failure to provide for necessary supervision . . . appropriate for a child after considering factors as the child’s age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child’s own basic needs or safety.” Minn. Stat. § 626.556, subd.

2(g)(3). The plain meaning of “neglect,” as defined by the legislature, does not constitute a form of abuse, nor does it require misconduct beyond a single act of failed supervision. The record establishes that three-year-old G.B. left Restorff’s home. A citizen, two and one-half blocks from Restorff’s home, heard semi-trucks honking as they passed her residence; she looked outside and saw G.B. holding onto a street sign. During this time, Restorff was not supervising G.B.

Restorff also claims that the commissioner misinterpreted maltreatment by neglect by using a definition for “supervision” found in the licensing rules and “a licensing violation and a maltreatment determination are not the same.” Although not every violation of a licensing supervision rule will necessarily constitute maltreatment, situations exist when a violation of a licensing supervision rule is maltreatment. Here, the definition of “supervision” in the licensing rules is relevant to determining whether Restorff failed “to provide for necessary supervision” for G.B. *See id.*; *see also* Minn. Stat. § 14.386(a) (2016) (stating that a rule adopted by an agency has the force and effect of law).

“‘Supervision’ means a caregiver being within sight or hearing of an infant, toddler, or preschooler *at all times* so that the caregiver is capable of intervening to protect the health and safety of the child.” Minn. R. 9502.0315, subp. 29a (2017) (emphasis added). Restorff argues that, based on this definition, “[t]here is nothing in the record to suggest that G.B. was not at least within hearing at the time he left the property.” But that is not necessarily true. When Restorff initially reported that G.B. had gone missing, she stated that when she noticed that he was missing she “began yelling for him and searching the yard.” It seems that to be within “hearing” of a child would mean that a hearing child could

also hear his caregiver yelling for him. More importantly, the inquiry is not solely whether G.B. was supervised at the time he left the property. The commissioner concluded that “[f]rom the moment [G.B.] left the home, [he] was not within [Restorff]’s sight or hearing until the time he was returned to her.” The entire time that G.B. walked over two blocks, near a busy road, he was not within Restorff’s sight or hearing “so that [she was] capable of intervening to protect” him. *See id.* Based on the record, the children went outside around 8:40 a.m., a citizen reported finding G.B. around 8:47 a.m., and Restorff reported G.B. missing at 9:06 a.m. Given that timeframe, G.B. was likely outside of Restorff’s sight or hearing for at least 25 minutes.

Restorff conceded that it is her responsibility to supervise the children and that she did not have the ability to intervene when G.B. was near the busy road. And Restorff understands the importance of protecting the children. She testified that she was surprised that G.B.’s parents had not disclosed that he previously wandered because that is “dangerous behavior.” She testified that she has supervision rules because there are people who walk and bike through her neighborhood and one cannot “trust anybody.” Given Restorff’s appreciation for safety, it is difficult to understand her focus on the moment G.B. left the property given that G.B., a three-year-old child, walked over two blocks near a busy road, and, for at least 25 minutes, was without his caregiver to intervene in an unsafe situation. Based on the record, the commissioner appropriately applied the facts to the law to conclude that Restorff committed maltreatment by neglect.

Decision supported by the record

Restorff also argues that the ALJ findings belie the conclusion that she failed to supervise G.B. She extracts one ALJ finding to point out the contradiction. But the commissioner modified this finding in the final order, which is the decision we review. The commissioner's finding stated:

[Restorff]'s normal practice was to keep children under five on her back deck with the gate closed, as an extra precaution. She did not follow this practice on August 1, 2016, because her assistant was outside in the yard with the children and [Restorff] believed she could see and hear all of the children out her open door and window.

This finding does not conflict with the commissioner's determination.

Restorff also argues that the commissioner took her testimony out of context in determining that G.B. wandering was "reasonably foreseeable." Restorff testified that she set "very clear boundaries," but the "little" children maybe did not always follow the rules. This statement supports that it was foreseeable that a three-year-old child could disobey a boundary rule and wander. Restorff also testified that, for "[e]xtra caution," children under the age of five stayed on the gated deck. Restorff testified that this precaution was not exercised on the date of the incident because her helper was there, her windows were open, and she thought that she would be quick and everything would be fine. Restorff's usual practice of keeping the younger children on the gated deck supports that it was foreseeable that a three-year-old child, without this safeguard, may wander. Restorff's statement that she was going to be "quick" and everything would "be fine" also indicates that she believed that she needed to quickly return to care for the children in order for everything to be fine.

Restorff claims that the commissioner's decision is unsupported by substantial evidence in view of the entire record. Substantial evidence is: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quotation omitted).

The evidence shows that Restorff was responsible for the care of three-year-old G.B. At 8:40 a.m., Restorff's helper went outside with G.B. and 11 other children. Restorff did not limit the boundary of the children younger than five years old to the gated deck. When Restorff went outside and noticed that G.B. was missing, she searched for him. Around 8:47 a.m. police received a call that G.B. was found by a citizen two and one-half blocks from Restorff's daycare. The citizen noticed G.B. when she looked out her window after hearing semi-trucks honking their horns as they passed her home. At 9:06 a.m. Restorff called 911 to report G.B. missing. She was immediately told that G.B. was with the police.

Until G.B. was returned to her, Restorff was not within sight or hearing of a toddler at all times so that she was capable of intervening to protect him. *See* Minn. R. 9502.0315, subp. 29a. Because Restorff failed to provide supervision, she committed neglect. *See* Minn. Stat. § 626.556, subd. 2(g)(3) (defining neglect as the failure to provide for necessary supervision). Based on the record, the commissioner's decision is supported by substantial evidence.

Affirmed.